



PUBLIC NOTICE

Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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DA 04-41

Released: January 9, 2004

**DOMESTIC SECTION 214 APPLICATION FILED FOR ACQUISITION OF CERTAIN
ASSETS OF TOUCH AMERICA, INC. (DEBTOR-IN-POSSESSION) BY QWEST
COMMUNICATIONS CORPORATION AND QWEST LD CORPORATION**

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 03-265

On December 23, 2003, Qwest Communications Corporation (QCC) and Qwest LD Corporation (QLDC) (jointly, Qwest), and Touch America, Inc. (Debtor-in-Possession) (Touch America) (collectively, Applicants), pursuant to sections 63.03 and 63.04 of the Commission's rules,¹ filed an application seeking authority for Qwest to acquire certain ATM/frame relay switching equipment from Touch America.

Applicants request streamlined processing for this application, asserting that Qwest is non-dominant in its provision of in-region, interstate, interexchange services, and Qwest's acquisition of the switching equipment at issue will have minimal impact on the domestic interexchange marketplace. In addition, Qwest states that there is significant competition for the type of services provided by this switching equipment, and therefore, the proposed transaction presents no threat to competition. However, because Qwest is affiliated with a dominant local exchange carrier (LEC) and the assets being acquired relate to Touch America services provided in the geographic area where Qwest's LEC affiliate is dominant, we find that streamlined processing is not appropriate in this case.² Alternatively, Qwest requests an expedited comment cycle, which we find is appropriate based on the bankruptcy considerations in this case.

Touch America is a Montana corporation headquartered in Butte, Montana. Touch America currently provides private line, dedicated and dial-up Internet, and ATM/Frame Relay services to customers in 15 states: Arizona, California, Colorado, Idaho, Illinois, Minnesota,

¹ 47 C.F.R. §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

² *See Domestic Section 214 Application Filed for Acquisition of Assets of Level 3 Communications, LLC by CenturyTel Fiber Company III, LLC d/b/a LightCore*, WC Docket No. 03-209, Public Notice, DA 03-3155 (WCB Oct. 09, 2003); *see also Domestic Section 214 Applications Filed for Acquisitions of Assets of Digital Teleport, Inc. by CenturyTel Fiber Company II, LLC*, WC Docket No. 03-99, Public Notice, DA 03-1289 (WCB Apr. 25, 2003).

Montana, Nevada, New Mexico, North Dakota, Oregon, Texas, Utah, Washington, and Wyoming. On December 8, 2003, Touch America filed an application pursuant to section 63.71 of the Commission's rules to discontinue its provision of domestic, interstate, interexchange ATM and frame relay services.³

QCC and QLDC are both Delaware corporations headquartered in Denver, Colorado. QCC and QLDC have blanket domestic section 214 authority and offer domestic, interexchange telecommunications services in all 50 states. QCC and QLDC are affiliates of Qwest Corporation, a Bell Operating Company and incumbent LEC in its 14-state region, which includes Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming (the "in-region states"). QCC and QLDC both are section 272 affiliates of Qwest Corporation, and are authorized to provide interLATA service to all in-region states.

On June 19, 2003, Touch America Holdings, Inc. and certain of its subsidiaries, including Touch America (collectively, the TA Debtors), filed voluntary petitions pursuant to Chapter 11 of the U.S. Bankruptcy Code to reorganize their business and financial structure.⁴ Prior to that date, Qwest and various affiliates (QC), were parties to numerous agreements whereby QC and the TA Debtors obtained various services from one another. As part of a broad settlement agreement addressing various disputes and claims between the two parties, Qwest has agreed to purchase a number of ATM/frame relay switches from Touch America. Qwest states that it is obtaining no customer accounts and none of Touch America's subscriber base as part of the proposed transaction. The equipment Qwest intends to purchase will not be serving customers at the time Qwest acquires it, nor will Qwest use the equipment to offer service upon obtaining it. Rather, any existing Touch America customers selecting Qwest as their new carrier will be served (at least initially) via Qwest's existing facilities.

The Applicants contend that the proposed transaction would serve the public interest, convenience and necessity. Moreover, the Applicants argue that the proposed application will have no adverse impact on competition in domestic markets. Finally, Applicants note that Touch America customers affected by the transaction have been afforded notice of the company's discontinuance of service in accordance with section 63.71 of the Commission's rules.

GENERAL INFORMATION

The transfer of assets identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of assets application if, upon further examination, it is determined to be defective

³ *Comments Invited on Application of Touch America, Inc. (Debtor-in-Possession) to Discontinue Domestic Telecommunications Services*, WC Docket No. 03-259, Public Notice, DA 03-4058 (WCB Dec. 19, 2003). The Public Notice notes that Touch America will not discontinue services until January 31, 2004.

⁴ *See* Chapter 11 Case No. 03-11915-MFW at al. (Bankr. D. Del.).

and not in conformance with the Commission's rules and policies. Interested parties may file **comments within 14 days and reply comments within 21 days** of this notice.⁵ Unless otherwise notified by the Commission, Applicants are permitted to transfer on the 31st day after the date of this notice.⁶ Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each pleading must be sent to each of the following:

- (1) the Commission's duplicating contractor, Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: qualexint@aol.com; facsimile: (202) 863-2898; phone: (202) 863-2893;

⁵ See 47 C.F.R. § 63.03(a).

⁶ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

- (2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: tracey.wilson-parker@fcc.gov;
- (3) Christi Shewman, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C142, Washington, D.C. 20554; e-mail: christi.shewman@fcc.gov;
- (4) Julie Veach, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C124, Washington, D.C. 20554; e-mail: julie.veach@fcc.gov;
- (5) Cynthia Bryant, Telecommunications Division, International Bureau, 445 12th Street, S.W., Room 7-A623, Washington, D.C. 20554; email: cynthia.bryant@fcc.gov; and
- (6) Christopher Killion, Office of General Counsel, 445 12th Street, S.W., Room 8-C740, Washington, D.C. 20554; e-mail: christopher.killion@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

For further information, please contact Tracey Wilson at (202) 418-1394 or Dennis Johnson at (202) 418-0809.

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